

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN DIAZ,

No. 2:05-cv-00376-MCE-CMK-P

Petitioner,

vs.

ORDER

DERRAL ADAMS,

Respondent.

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Petitioner, a state prisoner proceeding with appointed counsel, brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner's request for a certificate of appealability (Doc. 49), filed on March 17, 2008. Also before the court is petitioner's motion for leave to proceed in forma pauperis on appeal (Doc. 50).

Petitioner, a state prisoner proceeding pro se, has timely filed a notice of appeal of this court's denial of his application for a writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. See 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

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1 The court must either issue a certificate of appealability indicating which issues satisfy the
2 required showing or must state the reasons why such a certificate should not issue. See Fed. R.
3 App. P. 22(b). For the reasons set forth in the magistrate judge's February 29, 2008, findings and
4 recommendations, petitioner has not made a substantial showing of the denial of a constitutional
5 right.

6 As to petitioner's motion for leave to proceed in forma pauperis on appeal, because
7 petitioner was granted in forma pauperis status in this court, he does not require further
8 authorization to proceed in forma pauperis on appeal. See Fed. R. App. P. 24(a)(3).

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Petitioner's request for a certificate of appealability (Doc. 49) is denied; and
11 2. Petitioner's motion for leave to proceed in forma pauperis on appeal (Doc. 50) is
12 denied as unnecessary.

13 Dated: March 27, 2008

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15 MORRISON C. ENGLAND, JR.
16 UNITED STATES DISTRICT JUDGE
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